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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,583	09/22/1999	FREDERICK D. BUSCHE	CR9-99-049	3571
36736	7590	05/05/2004	EXAMINER	
DUKE W. YEE CARSTENS, YEE & CAHOON, L.L.P. P.O. BOX 802334 DALLAS, TX 75380			KEMPER, MELANIE A	
			ART UNIT	PAPER NUMBER
			3622	

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/400,583	BUSCHE ET AL. <i>M.K.</i>	
Examiner M Kemper	Art Unit 3622		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 18 February 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 39,41-44,53 and 55-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 39,41-44,53,55-57 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 39, 41-44, 53, 55-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. patent number 5,920,261 in view of Toung "Wal-Mart Stores, Inc. – Company Report" further in view of "The Data Game".

Hughes et al. teaches associating spatial relationships with customer data to determine additional information concerning purchases by the customer (see at least col. 16, line 40 – col. 17, line 50, col. 18, lines 19-23, col. 20, lines 10-15, 25-65), recording (identifying) paths of customers (see at least col. 18, lines 15-17, 35-40, col. 15, lines 15-50), associating the locations of products with the paths of customers as claimed (see at least col. 16, line 40 – col. 17, line 50, col. 18, lines 19-23, col. 20, lines 10-15, 25-65) which employs data mining algorithms to generate input data for forming the set of spatial relationships (see at least col. 17, lines 5-20, 30-45, col. 20, lines 10-15, 25-60) and spatial analysis algorithms to form the set of spatial relationships (see at least col. 20, lines 40-50, col. 19, lines 1-35, col. 13, lines 25-45, col. 18, lines 15-40).

Toung teaches generating customer data by associating customers with information related to each customer using data mining and associating the information with spatial relationships (p. 1). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the data mining of Toung in the system of Hughes since the data mining of Toung would have provided the ability to sort patterns by

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customer information. The "Data Game" teaches performing data mining in order to trace the exact route each customer has taken through the store (p. 2). To the event the claims can be interpreted differently, it would have been obvious to one having ordinary skill in the art at the time of the invention to have generated the spatial relationships including associating the customer path with product placement as in "The Data Game" since this would have removed the need and associated cost of the tags associated with the items.

3. Applicant's arguments filed on 2/18/04 have been fully considered but they are not persuasive. The applicant argues that Hughes does not teach "generating associations between those paths and product placement by means of data mining". Please note that this language is not present in the claims. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., generating associations between paths and product placement by means of data mining) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims recite the broad concept of generating spatial relationships using data mining techniques where the spatial relationships further include associations of customer paths through the retail space with product placement. It is maintained that Hughes satisfies this language since associations are made using the customer paths with product location as shown above. Also, note that the passages in col. 17 refer to customer patterns included in terms of

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traffic area (see also col. 20, lines 10-40) which include customer paths. In this case, data mining tools are used to measure and analyzed facility performance by associating the object location to traffic (path) data.

The arguments with respect to Toung are not persuasive particularly in light of The Data Game which refers to the WalMart data mining as in Toung. The combination of the references do show the association of customer paths to product placement where buying patterns relate to the customer route.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Kemper whose telephone number is 703-305-9589. The examiner can normally be reached on M-F (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on 703-305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

  
M Kemper  
Primary Examiner  
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